

APPEAL NO. 032447  
FILED NOVEMBER 5, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on August 13, 2003. The hearing officer determined that: (1) respondent 1/cross-appellant (claimant) sustained a compensable injury during the course and scope of employment; (2) the date of injury (DOI) is \_\_\_\_\_; (3) the claimant had disability resulting from the injury, from June 22 through September 10, 2001; (4) the appellant/cross-respondent (carrier 1) is not relieved from liability because the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury; (5) carrier 1 is not relieved from liability under Section 409.002, because the claimant timely notified his employer of an injury pursuant to Section 409.001; and (6) carrier 1 waived its right to dispute the claimant's injury, pursuant to Section 409.021. Carrier 1 appeals these determinations on sufficiency of the evidence grounds. The claimant cross-appeals the hearing officer's disability determination, asserting that disability continued through the date of the hearing. Respondent 2 (carrier 2) did not respond.

**DECISION**

Affirmed in part and reversed and rendered in part, as reformed.

**INJURY, DOI, DISABILITY, NOTICE, and CLAIM FOR COMPENSATION**

The hearing officer did not err in making the complained-of injury, DOI, disability, notice, and claim for compensation determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

**WAIVER**

We first address clerical errors contained in the hearing officer's Decision and Order. The Statement of the Evidence and Finding of Fact Nos. 13, 14, and 15 provide that carrier 1 received written notice of the injury on June 23, 2002, and notified the Commission that it would pay benefits as due on June 30, 2002. However, the evidence shows the relevant dates to be July 23, 2002, and July 30, 2002. We view the difference in dates as a mere clerical error. Accordingly, we reform the hearing officer's decision to conform to the dates provided in the evidence.

The hearing officer erred in determining that the carrier waived its right to dispute the claimant's injury pursuant to Section 409.021. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, citing Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002), we interpreted Section 409.021 to require that a carrier take some action within seven days of receiving written notice of an injury and indicated that this could include the submission of a "cert-21." See *also* Texas Workers' Compensation Commission Appeal No. 022375-s, decided October 31, 2002 (holding that the carrier did not waive compensability, when the carrier filed a "cert-21" within 7 days of receipt of written notice, benefits accrued but were not paid by the carrier, and the carrier subsequently disputed the claimed injury within 60 days). In the present case, the hearing officer found that carrier 1 received written notice of an injury on July 23, 2002. The hearing officer further found that carrier 1 notified the Commission, on July 30, 2002, that it would pay benefits when they accrued. This finding of fact was not appealed by either party. Because carrier 1 submitted a "cert-21" within seven days of receipt of written notice, we reverse the hearing officer's waiver determination and render a decision that carrier 1 did not waive its right to dispute the injury under Section 409.021.

The hearing officer's decision and order is affirmed in part and reversed and rendered in part, as reformed, consistent with our decision above.

The true corporate name of insurance carrier 1 is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES  
9330 LBJ FREEWAY, SUITE 1200  
DALLAS, TEXAS 75243.**

The true corporate name of insurance carrier 2 is **SENTRY INSURANCE A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**TREVA DURHAM  
1000 HERITAGE CENTER CIRCLE  
ROUND ROCK, TEXAS 78664.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Robert W. Potts  
Appeals Judge